



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130903775-4276-02]

RIN 0648-BD65

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing the specifications for fishing year (FY) 2014 for butterfish, as well as other management measures for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. NMFS previously set specifications for longfin squid and Illex squid for 3 years in 2012 (FYs 2012-2014) and, therefore, new specifications for these species are not included in this year's specification rulemaking. Likewise, NMFS set specifications for mackerel for 3 years in 2013 (2013-2015), so new mackerel specifications are not included in this action. This action increases the butterfish acceptable biological catch by 8 percent and the butterfish landings limit by 24 percent compared to FY 2013. This action also increases the butterfish Phase 3 trip limit from 500 lb (0.23 mt) to 600 lb (0.27 mt) for longfin squid/butterfish moratorium permit holders; establishes a 236-mt cap on river herring (blueback and alewife) and shad (American and hickory) catch in the mackerel

fishery; and raises the post-closure possession limit for longfin squid to 15,000 lb (6.80 mt) for vessels targeting Illex squid.

DATES: Effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the 2014 specifications document, including the Environmental Assessment (EA), is available from John K. Bullard, Regional Administrator, Greater Atlantic Regional Fisheries Office (formerly Northeast Regional Office), National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from: John K. Bullard, Regional Administrator, at the address provided above.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195.

SUPPLEMENTARY INFORMATION:

Background

Specifications, as referred to in this rule, are the combined suite of commercial and recreational catch levels established for 1 or more FYs. The specification process also allows for the modification of a select number of management measures, such as closure thresholds, gear restrictions, and possession limits. The Mid-Atlantic Fishery Management Council's (Council) process for establishing specifications relies on provisions within the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the Magnuson–Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act). Specifically, section 302(g)(1)(B) of the Magnuson-Stevens Act states that the Scientific and Statistical Committee (SSC) for each Regional Fishery Management Council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL).

The Council's SSC met on May 15 and 16, 2013, confirming FY 2014 specifications for Illex squid, longfin squid, and Atlantic mackerel (mackerel) and recommending ABCs for the FY 2014 butterfish specifications. A proposed rule for FY 2014 MSB specifications and management measures was published on January 10, 2014 (79 FR 1813); the public comment period for the proposed rule ended February 10, 2014. NMFS set the specifications for longfin squid and Illex squid for 3 years in 2012 (77 FR 51858; August 27, 2012) and for mackerel in 2013 (78 FR 3346; January 16, 2013). Information on these specifications is not included in this action (except for in Table 1), but can be found in the final rules for those actions, as referenced above.

The MSB regulations require the specification of annual catch limits (ACL) and accountability measures (AM) for mackerel and butterfish (both squid species are exempt from the ACL/AM requirements because they have a life cycle of less than 1 year). In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), and total allowable level of foreign fishing (TALFF), along with joint venture processing for (JVP) commercial and recreational annual catch totals (ACT) for mackerel, the

butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species. Details concerning the Council’s development of these measures were presented in the preamble of the proposed rule and are not repeated here.

The Council recommended that up to 3 percent of the total ACL for mackerel, up to 3 percent of the IOY for Illex and longfin squid, and up to 2 percent of the butterfish ACT could be set aside to fund projects selected under the 2014 Mid-Atlantic Research Set-Aside (RSA) Program. The final RSA allocation for longfin squid, 635 mt, is subtracted from the IOY for longfin squid in the table below. The butterfish award, 115 mt, is accounted for within the 1,106-mt unallocated portion of the butterfish ACT that covers discards in other fisheries (i.e., the ACL minus the Commercial ACT), and is thus not reflected in the table below.

Table 1. Final Specifications, in Metric Tons (mt), for Mackerel for 2013-2015, Butterfish for FY 2014, and Longfin and Illex Squid for the FY 2013-2014 Fishing Year

Specifications	Mackerel	Butterfish	<u>Illex</u>	Longfin
OFL	Unknown	18,200	Unknown	Unknown
ABC	43,781	9,100	24,000	23,400
ACL	43,781	9,100	N/A	N/A
Commercial ACT	34,907	8,190	N/A	N/A
Recreational ACT/RHL	2,443	N/A	N/A	N/A
IOY	N/A	N/A	22,915	21,810
DAH/DAP	33,821	3,200	22,915	21,810
JVP	0	N/A	N/A	N/A
TALFF	0	0	N/A	N/A

RSA	N/A	**	N/A	635
Butterfish Mortality Cap		3,884		

** Part of ACT that accounts for discards in other fisheries.

Final FY 2014 Specifications for Butterfish

Details regarding the derivation of the Council's recommended butterfish specifications were included in the proposed rule, and are not repeated here. This action establishes the butterfish specifications as recommended by the Council. The butterfish ACL is set equal to the ABC, and there is a 10-percent buffer between ACL and ACT for management uncertainty, which results in an ACT of 8,190 mt. The DAH and DAP are set at 3,200 mt, and the butterfish discard cap in the longfin fishery is maintained at 3,884 mt. The remaining 1,106 mt of the ACT allows for discards in other fisheries to minimize the likelihood of an ACL overage, and covers the RSA allocation of 115 mt. Additionally, consistent with MSB regulations, butterfish TALFF is set at zero for FY 2014. Butterfish TALFF is only specified to address bycatch by foreign fleets targeting mackerel TALFF. Because no mackerel TALFF was allocated for FYs 2013-2015, butterfish TALFF is also set at zero.

Consistent with FY 2013, the FY 2014 butterfish mortality cap is allocated by Trimester, as follows:

Table 2. Trimester Allocation of Butterfish Mortality Cap on the Longfin Squid Fishery for 2014

Trimester	Percent	Metric Tons
I (Jan-Apr)	65	2,525
II (May-Aug)	3.3	128
III (Sep-Dec)	31.7	1,231

Total	100	3,884
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This action also increases the butterfish possession limit in Phase 3 of the directed butterfish fishery. Currently, NMFS manages the directed butterfish fishery in three phases. Table 3 shows the phases and possession limits, and the fishery moves from Phase 1, to Phase 2, and to Phase 3 when catch reaches specified thresholds throughout the year. When NMFS projects the butterfish harvest to reach the catch threshold for Phase 3, the trip limit for all limited access permit holders is currently reduced to 500 lb (0.23 mt) to avoid quota overages, but the incidental trip limit remains at 600 lb (0.27 mt). This action increases the Phase 3 possession limit from 500 lb (0.23 mt) to 600 lb (0.27 mt) to be consistent with the current incidental butterfish trip limit.

Table 3. Three-Phase Butterfish Management System

Phase	Longfin squid/butterfish moratorium permit Trip Limit		Squid/butterfish incidental catch permit Trip Limit
	≥ 3 inch (7.62 cm) mesh	<3 inch (7.62 cm) mesh	
1	Unlimited	2,500 lb (1.13 mt)	600 lb (0.27 mt)
2	5,000 lb (2.27 mt)	2,500 lb (1.13 mt)	600 lb (0.27 mt)
3	600 lb (0.27 mt)	600 lb (0.27 mt)	600 lb (0.27 mt)

This action implements the following quota thresholds to reduce the trip limits for Phases 2 and 3 (Tables 4 and 5):

Table 4. Butterfish Thresholds for Reducing Trip Limits for Phase 2

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	52	1,658
Mar-Apr	57	1,838

May-Jun	64	2,044
Jul-Aug	70	2,249
Sept-Oct	77	2,455
Nov-Dec	82	2,635

Table 5. Butterfish Thresholds for Reducing Trip Limits for Phase 3

Months	Trip Limit Reduction Threshold (Percent)	Butterfish Harvest (Metric Tons)
Jan - Feb	66	2,121
Mar-Apr	71	2,275
May-Jun	77	2,455
Jul-Aug	82	2,635
Sept-Oct	88	2,815
Nov-Dec	93	2,969

Proposed River Herring and Shad Catch Cap in the Mackerel Fishery

This action establishes a river herring and shad (RH/S) catch cap in the mackerel fishery. In order to limit RH/S catch, Amendment 14 to the FMP (79 FR 10029, February 24, 2014) includes the provision to allow the Council to set a RH/S cap. However, the actual value of the cap must be set through annual specifications. As such, this action implements the Council's recommended RH/S catch cap of 236 mt, which represents the estimated median amount of RH/S that would have been caught, had the commercial mackerel fishery landed its current quota of 33,821 mt for each year during 2005-2012, based on analysis of observer and landings. RH/S caught on all trips that land 20,000 lb (9.07 mt) or more of mackerel count against the cap. Once NMFS estimates that directed mackerel trips have caught 95 percent of the 236-mt RH/S cap, the directed mackerel fishery will close, and NMFS will institute a 20,000-lb (9.07-mt) mackerel trip limit, as currently occurs if the directed mackerel fishery closes. The RH/S cap amount should create a strong incentive for the fleet to avoid RH/S, allows for the possibility of the full

mackerel quota to be caught if the fleet can avoid RH/S, and should reduce RH/S catches over time, compared to what would occur without a cap, given recent data.

Longfin Squid Possession Limit Increase

This action increases the Trimester II longfin squid post-closure possession limit for longfin squid/butterfish moratorium permit holders from 2,500 lb (1.13 mt) to 15,000 lb (6.80 mt) of longfin squid for vessels targeting Illex squid if they are fishing seaward of the Illex mesh exemption line and have more than 10,000 lb (4.54 mt) of Illex onboard. In recent years, fishermen are reporting that, to remain in compliance with longfin squid regulations, they sometimes have to discard large quantities of longfin squid while Illex fishing during longfin squid Trimester II after that trimester closes (i.e., from July 10-August 31 in 2012). Increasing the longfin squid possession limit to accommodate the multi-day nature of Illex fishing trips reduces the potential for high levels of regulatory discarding of longfin squid on such trips. Requiring a minimal Illex possession requirement of 10,000 lb (4.54 mt) helps ensure that vessels are actually Illex fishing when they utilize this provision, and restricting the possession limit increase to areas beyond the Illex mesh exemption line will help prevent vessels returning from Illex fishing from targeting longfin squid in inshore areas after a Trimester II closure. This action does not change the post-closure possession limit for longfin squid during Trimesters I (January 1 – April 30) or III (September 1 – December 31). The post-closure possession limit for longfin squid remains 2,500 lb (1.13 mt) during those Trimesters.

Corrections

This final rule also makes minor corrections to existing regulations, and reinstates regulations that were inadvertently deleted in previous rulemakings. NMFS implements these

adjustments under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments, which are identified and described below, are necessary to clarify current regulations or the intent of the FMP and do not substantively impact any existing regulations.

NMFS corrects references to a now obsolete section of the regulatory text at § 648.26(a)(1)(iii). NMFS clarifies the coordinates at § 648.23(a)(3) to more accurately define the Illex exemption line. Most significantly, this action proposes to create a southern boundary for the exemption by extending the southernmost point eastward until it intersects with the boundary of the Exclusive Economic Zone. In addition, this rule reinstates the coordinates for the MSB bottom trawling restricted areas (i.e., Oceanographer Canyon and Lydonia Canyon) at § 648.23(a)(4), and the Tier 3 closure threshold for the mackerel fishery at § 648.24(b)(1)(ii), which were inadvertently deleted in previous rulemakings.

Comments and Responses

NMFS received 101 comments on the proposed rule. Four were from industry groups, including the Garden State Seafood Association (GSSA), Lund's Fisheries Incorporated (Lund's), the Cape Cod Commercial Fishermen's Alliance (CCCFA), and the Angler's Conservation Network (ACN). Four were from environmental groups, including the Herring Alliance, Wild Oceans, the Pew Charitable Trusts (Pew), and The Natural Resources Defense Council (NRDC). The remaining 93 comments were from individuals. Only comments relevant to the measures considered the 2014 Specifications and Management Measures are addressed

below. Comments related to other fishery management actions or general fishery management practices are not addressed here.

Comments on Butterfish Specifications and Management Measures

Comment 1: GSSA and Lund's both commented in support of the Council's recommended butterfish specifications, including the DAH, the butterfish mortality cap, and the 3-phase butterfish management system. Both groups look forward to the opportunity to for a directed butterfish fishery in 2014.

Response: NMFS is implementing the specifications as proposed.

Comment 2: GSSA and Lund's both commented in support of the proposed increase to the Phase 3 butterfish possession limit for longfin squid/butterfish moratorium permit holders.

Response: NMFS concurs with the commenters, and believes that aligning the incidental butterfish possession limit and the Phase 3 possession limit for longfin squid/butterfish moratorium permit holders will reduce regulatory confusion.

Comment 3: One individual commented that there should be no increase in butterfish catch, and that the increase has no basis in fact.

Response: NFMS disagrees. As described in the proposed rule for this action, the Council's recommended specifications are based on a NMFS Northeast Fisheries Science Center (NEFSC) analysis that suggested that increasing the butterfish ABC to 9,100 mt (from 8,400 mt in 2013) would be extremely unlikely to cause overfishing if the 2014 butterfish biomass were similar to butterfish biomass from 2006-2012. In addition, the NEFSC recently completed an assessment for butterfish, which found that butterfish stock is not overfished and overfishing is not occurring (Northeast Fisheries Science Center. 2014. 58th Northeast Regional Stock

Assessment Workshop (58th SAW) Assessment Summary Report. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 14-03; 44 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at <http://nefsc.noaa.gov/publications/>).

Comment 4: One individual commented that there should be a commercial cap on butterfish catch. The commenter stated that trawlers devastate the butterfish population in certain areas and ruin fishing for recreational fisherman. The commenter went on to state that butterfish are an important forage species for striped bass, and that, when butterfish populations are low, fishing for striped bass and bluefish are virtually nonexistent because these predatory fish migrate to areas where more forage fish are available.

Response: NMFS notes that total commercial butterfish catch is limited by the butterfish ABC. Overall catch recommendations by the Council and the SSC are based on fishery stock assessments, which take natural mortality (including predation) into account. Although difficult to account for with available information, the role of species like butterfish in the complex ocean ecosystem is therefore considered in setting allocations. NMFS conducts research and investigates ways of incorporating ecosystem approaches into management that in the future could be considered for species like butterfish.

Comment on the Post-Closure Longfin Squid Possession Limit Increase

Comment 5: GSSA commented in support of the proposed increase to the Trimester II post-closure longfin squid possession limit for vessels targeting Illex squid.

Response: NMFS concurs with the commenters. Increasing the Trimester II post-closure longfin squid possession limit should reduce regulatory discarding on Illex squid trips.

Comments on the River Herring and Shad Catch Cap

Comment 6: GSSA and Lund's expressed concern that the 236-mt RH/S catch cap will jeopardize the optimum yield (OY) of the mackerel fishery if it returns this winter and spring. They noted that National Standard 1 requires the maintenance of OY for the U.S. fishing industry on a continuing basis.

Response: The Council's recommendation of 236 mt represents the estimated median amount of RH/S that would have been caught, had the commercial mackerel fishery landed its current quota of 33,821 mt for each year during 2005–2012, based on analysis of observer and landings. According to the National Standard 1 guidelines, OY is achieved by balancing the objectives of the fishery management plan with the various interests that comprise the greatest benefit to the nation, while at the same time preventing overfishing of the stock in question. As discussed in the EA for 2013 MSB Specifications, the most recent action to set mackerel specifications, the established mackerel quotas are designed to prevent overfishing while allowing for the fishery to catch the specified quota. As noted in the Council's analysis for 2014 MSB Specifications, the recommended RH/S cap level is intended to allow the mackerel fishery to catch its full quota if it achieves a relatively low RH/S encounter rate. This means that the selected RH/S quota should allow the fishery to achieve OY. NMFS agrees that the RH/S cap amount should create a strong incentive for the fleet to avoid RH/S while allowing for the possibility of the full mackerel quota to be caught.

Comment 7: GSSA and Lund's acknowledged the fishing industry's responsibility to reduce RH/S catch, as required by National Standard 9, but note that the industry has been actively engaged in bycatch reductions for these species for several years as part of the ongoing University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST)

and Massachusetts Division of Marine Fisheries (MADMF) bycatch avoidance and shoreside monitoring program. They expressed disappointment that the bycatch avoidance program is sufficient to reduce Atlantic sea scallop fleet interactions with yellowtail flounder, but that it is not good enough for managing the region's pelagic fisheries.

Response: The Atlantic sea scallop fishery does not depend on the S Mast/MADMF bycatch avoidance program to limit yellowtail flounder bycatch. Rather, the scallop fishery is subject to a cap on yellowtail catch that, if exceeded, results in area and seasonal closures of the scallop fishery. Each fishing year, the New England Fishery Management Council and NMFS set limits on the amount of yellowtail flounder that the scallop fishery can catch. If the scallop fishery exceeds its limits, seasonal area closures are triggered. The avoidance program helps the scallop fishery remain below the applicable yellowtail sub-ACL, which is what the river herring bycatch avoidance program would help the mackerel fishery do in the face of the new RH/S catch cap.

Comment 8: GSSA and Lund's asserted that the cap has no biological foundation and no measurable benefits to RH/S.

Response: As noted in the Amendment 14 final rule, data from the recent Atlantic States Marine Fisheries Commission (ASMFC) assessments for RH/S are insufficient to determine a biologically based catch cap for these species, and/or the potential effects on these populations if a catch cap is implemented on a coast-wide scale. In the absence of biologically based data, the cap is based on recent RH/S catch in the mackerel fishery. The Council and NMFS believe that capping the allowed level of RH/S catch in the mackerel fishery should provide an incentive for the industry to avoid RH/S, and may help to minimize, but will at least limit encounters with

these species. Though it is difficult to measure the benefits of the catch cap on RH/S stocks without absolute abundance estimates, NMFS believes that, until better stock status information is available, implementing a cap will allow for better characterization of RH/S encounters in the mackerel fishery, and prevent RH/S catch from increasing beyond current levels.

Comment 9: GSSA and Lund's recommended that the 456-mt cap considered by the Council be applied during FY 2014. They believe the higher cap will increase the chances that the fleet will be able to target mackerel, should they return in abundance this year.

Response: The Council's analysis suggested that, by setting the RH/S cap at 456 mt, the mackerel industry would only have to avoid RH/S encounter rates similar to those observed in 2007 and 2012, the 2 recent years with the highest RH/S encounter rates, in order to catch the entire mackerel quota without attaining the RH/S cap. The Council determined, and NMFS agrees, that the 456-mt cap would not provide sufficient incentive for industry to continue to avoid RH/S. The selected 236-mt cap is expected to allow the fleet to catch the entire mackerel quota if RH/S interactions are kept to a minimum.

Comment 10: GSSA and Lund's asserted that the midwater trawl fleet is being accused of negatively impacting the region's RH/S stocks without evidence, and without attempts to assign relative mortality to the range of issues facing RH/S recovery in the region. They note that the region's alewife runs are dramatically improving as habitat is reclaimed and environmental factors have provided for good recruitment in recent years.

Response: The impacts of RH/S catch in the mackerel fishery are not clear. Despite some signs of recovery for RH/S in some regions, the assessments of these species have concluded that they are depleted and that commercial fishing is a contributing factor. The

Council recommended, and NMFS agrees with, addressing this by establishing the RH/S cap for the mackerel fishery. NMFS has also established a working group to evaluate all threats to river herring populations and possible solutions and ways of protecting river herring, and shad would benefit from the ultimate measures aimed at protecting river herring.

Comment 11: The NRDC, Pew, the Herring Alliance, ACN, CCCFA, Wild Oceans, and 91 individuals commented in support of a RH/S cap that would close the directed mackerel fishery when 95 percent of the cap has been reached. Commenters point to the depleted state of RH/S stocks, and the importance of these species as food sources for ocean predators. They also assert that the cap will provide strong incentive for offshore trawlers to avoid these fish in order to catch their target species.

Response: NMFS concurs with the commenters, and believes the RH/S cap should create an incentive for the fleet to avoid RH/S while allowing for the operation of the mackerel fishery.

Comment 12: The NRDC, Pew, the Herring Alliance, and ACN urged NMFS to retroactively account for all RH/S catches from January 1, 2014, forward. These groups also urged NMFS to implement the RH/S cap as soon as possible and waive the 30-day delay of the final rule's effective date for good cause. Pew and the Herring Alliance noted that a majority of mackerel landings happen from January to April, and that the greatest incidental catch of RH/S will likely occur during these months. Pew and the Herring Alliance went on to state that, if RH/S catch after January 1, 2014, meets or exceeds the cap, NMFS should close the mackerel fishery immediately to prevent additional, significant catch. Pew and the Herring Alliance argued that similar actions form a strong precedent to waive the 30-day delay in effectiveness for the final rule. They cite that NMFS waived the 30-day delay in effectiveness for midwater trawl

vessels in Closed Area I (CA I) because a delay would have failed to increase observer coverage and control at-sea dumping of unsampled catch in time for an annual pulse of effort in CA I, and that this delay would have pushed back data collection by up to 1 year (74 FR 56567; November 2, 2009).

Response: NMFS will retroactively account for RH/S catch in the mackerel fishery from January 1, 2014, to the present. Given our intent to retroactively account for RH/S catch, we believe a waiver of the 30-day delay in effectiveness is justified so that NMFS is able to enforce a closure of the mackerel fishery related to the RH/S cap, should that become necessary.

Comment 13: Wild Oceans asked that, in lieu of Wild Oceans' preferred course of managing RH/S in a Federal FMP, NMFS devote the resources necessary to facilitate comprehensive conservation of RH/S throughout state and Federal waters, by coordinating management across Council jurisdictions (Mid-Atlantic and New England) and overlapping fisheries (Atlantic herring and mackerel).

Response: NMFS is committed to engaging in proactive, coordinated conservation efforts for RH/S. NMFS considers river herring to be a species of concern, but recently (78 FR 48944, August 12, 2013) determined that listing river herring as either threatened or endangered under the Endangered Species Act is not warranted at this time. Following this determination, NMFS established a technical working group and continues to work closely with the ASMFC and other partners to develop a long-term, dynamic conservation plan for river herring from Canada to Florida. The working group will evaluate the impact of ongoing restoration and conservation efforts (e.g., the RH/S caps in the mackerel and Atlantic herring fisheries), as well as new fisheries management measures, which should benefit the species. It will also review

new information produced from ongoing research, including genetic analyses, ocean migration pattern research, and climate change impact studies, to assess whether recent reports showing higher river herring counts in the last 2 years represent sustained trends. NMFS is also committed to working with partners and tribal governments to continue implementing important conservation efforts and fund needed research for river herring. NMFS intends to revisit its river herring status determination within the next 5 years.

Comment 14: The Herring Alliance, Pew, and ACN also requested management of RH/S in a Federal FMP, and argued that, while the proposed catch cap is a first step, it is ultimately insufficient to prevent further population declines. They stated that the Magnuson-Stevens Act requires all stocks in need of conservation and management to be added to an FMP, and that an FMP would align Federal management more closely with state moratoria and sustainable fishery plans.

Response: The issue of Federal management of RH/S in an FMP is not considered in this action. The Council initiated Amendment 15 to the MSB FMP to explore the need for conservation and management of RH/S, and analyze all of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) provisions (i.e., management reference points, description and delineation of essential fish habitat, etc.) required for a Federal FMP. Scoping for MSB Amendment 15 began in October 2012 (77 FR 65867). The Council completed a document that examined a range of issues related to Federal management for RH/S. The document presented legal requirements for managing species under the MSA, the existing management and protection of RH/S, and the potential benefits of managing them under the MSA in contrast to the other authorities already providing protection. After reviewing the

document, the Council determined at its October 2013 meeting that it should not go forward with the development of Amendment 15 at this time. The Council's decision was based on a range of considerations related to ongoing RH/S conservation and management efforts, including conservation efforts for RH/S at the local, state and Federal level, the pending incidental catch caps for RH/S in the Atlantic mackerel and Atlantic herring fisheries, the recent determination by NMFS that river herring are not endangered or threatened, and the NMFS commitment to expand engagement in river herring conservation following the ESA determination. The Council also decided to re-evaluate Federal management of RH/S in 3 years after a number of other actions related to RH/S conservation have been implemented.

Comment 15: Wild Oceans, Pew, the Herring Alliance, and ACN expressed concerns about the ability of NMFS to monitor and enforce the cap, given that key measures in MSB Amendment 14 were disapproved. They state that 100-percent observer coverage on large capacity vessels and accountability measures to curtail the discarding of catch at-sea (slippage) are essential to an effective RH/S cap, given the fleet's fishing capacity and its demonstrated propensity for episodic, high impact bycatch events.

Response: While increases to observer coverage may improve the quality of data used to determine the rate of RH/S bycatch in the mackerel fishery, NMFS disagrees that the RH/S catch cap cannot be administered without the observer coverage and slippage cap measures disapproved in Amendment 14. Several key measures approved in Amendment 14 will be instrumental in administration of the cap. Amendment 14 implemented a pre-trip notification requirement for the mackerel fishery to help with the identification of directed mackerel trips and the placement of observers on those trips. Amendment 14 also expanded sampling requirements

to assist observers in the successful and complete collection of data on observed trips, and instituted a prohibition on slippage on observed mackerel trips.

In addition, the Council and NMFS are moving forward with the development of actions to address the disapproved observer coverage measures and the slippage cap. To address the disapproved observer coverage measures, NMFS has taken the lead on an omnibus amendment that would create the framework for industry-funded monitoring programs for all Northeast FMPs. The amendment will activate industry-funded observer coverage when NMFS has funding available to cover its costs to administer these programs. The omnibus amendment also includes coverage targets for the Atlantic mackerel fishery.

To address the disapproved slippage cap, the Council recently took final action on Framework Adjustment 9 to the MSB FMP at its February 2014 meeting. The Council selected an alternative that would require vessels to return to port if they release catch prior to making it available for sampling by an observer for reasons other than safety concerns, mechanical failure, or dogfish clogging the pump. The Council is finalizing the analysis supporting its recommendation, after which it will submit Framework 9 for NMFS review.

Comment 16: The Herring Alliance commented that, even with 100-percent coverage, slippage would hinder the goals of the cap by skewing observer and landings data. They cited the midwater trawl CA I provisions again in saying that NMFS has already acknowledged that accurate catch composition records cannot be obtained for dumped catch (75 FR 73979, November 30, 2010). In addition, the Herring Alliance asserted that NMFS documented slippage as a problem that directly affects the administration of the butterfish mortality cap on the longfin squid fishery, where longfin squid hauls have been slipped due to the presence of

butterfish.

Response: NMFS agrees with the commenter that the best way to obtain catch composition information is through full sampling of hauls by observers. As noted in the previous response, NMFS will address the issue of discarding of unsampled catch on observed trips by implementing a prohibition on slippage through Amendment 14. In addition, the Council recently took final action on a measure to further deter slippage events. NMFS believes that these requirements should improve the quality of data used to estimate the RH/S catch caps.

NMFS reiterates that the slippage prohibition and the requirement that captains submit released catch affidavit to document all slippage events (also implemented in Amendment 14) are also a requirement for longfin squid permit holders, which can help address any issues with the administration of the butterfish mortality cap that may have resulted from past slippage events.

Comment 17: Wild Oceans expressed disappointment that NMFS representative who participated in MSB Amendment 14 did not, in their view, proactively help the Council resolve the agency's concerns about observer coverage and slippage. They praised the Mid-Atlantic Council for continuing to pursue these issues in new actions in spite of the disapprovals, and encouraged NMFS to work constructively with the Council to improve monitoring of the mackerel fishery.

Response: This comment misrepresents the events that led up to the partial approval of Amendment 14. NMFS staff provided guidance and input on Amendment 14 throughout the process and warned the Council of the problems associated with its observer coverage and slippage alternatives on several occasions. NMFS has clearly explained the reasons for

disapproving measures in Amendment 14 (79 FR 10029; February 24, 2014) and that discussion is not included in this rule. NMFS is working with Council to resolve the issues and has taken the lead on resolving the observer coverage issues disapproved in Amendment 14.

Comment 18: The NRDC, Pew, the Herring Alliance, CCCFA, and ACN supported transitioning towards a biologically based cap on RH/S as soon as possible. The Herring Alliance and Pew went on to say that a biologically based cap should include an analysis of the status of river populations of RH/S in discrete geographic regions, and should also account for directed and incidental catch of RH/S in state waters. The Herring Alliance and Pew also advocated for review of the cap by the Council's SSC to improve oversight of cap determination, and that there be an annual review of the cap, similar to the review conducted on the butterflyfish mortality cap on the longfin squid fishery.

Response: Both NMFS and the Council would like to move towards a biologically based RH/S catch cap as soon as possible. As noted above, NMFS plans to work with state and Federal partners over the coming 3-5 years to support research that will fill important data gaps that limited recent assessments for these species. In addition, the Council has already indicated it is interested in involving its SSC in the determination of RH/S catch caps in the future. In the meantime, the cap will be reviewed annually during the specifications setting process, and the best available scientific information will be used to adjust the cap level. The annual evaluation and re-specification of the cap may include certain elements of the periodic reviews done for the butterflyfish mortality cap on the longfin squid fishery, including estimates of scientific uncertainty of the catch cap estimate, and estimates of RH/S mortality in the mackerel fishery.

The ASMFC continues to manage RH/S catch in state waters. At this time, there is no

coordination between the Federal cap on RH/S in the mackerel fishery, and catch limits in state waters set by the ASMFC. As noted in the Council analysis for 2014 specifications, Council and NMFS technical staffs continue to investigate the application of a regional cap spanning multiple fisheries and jurisdictions. However, the scope of this action and Amendment 14 are limited to RH/S catch in the mackerel fishery.

Comment 19: While they support implementation of the cap, Wild Oceans and the Herring Alliance asserted that a more effective cap, in terms of reducing mortality, would have been set at the median of recent actual RH/S catch, rather than what catch would have been had the mackerel fishery landed its full quota from 2005-2012. The Herring Alliance went further in suggesting that NMFS should scale back catch based on the advice in the NMFS report for data poor stocks, and that the cap should be adjusted annually as scientific information becomes available through better monitoring, in accordance with National Standard 2.

Response: The Council and NMFS are committed to minimizing RH/S encounters in the mackerel fishery. However, data do not appear to be robust enough to determine a biologically based catch cap for RH/S, and/or the potential effects on these populations if a catch cap is implemented on a coast-wide scale. Given these limitations, the Council chose to balance its goal of minimizing RH/S catch in the mackerel fishery, with the goal of allowing the mackerel fishery the potential to attain its full quota. The Council's preferred 2014 RH/S catch cap of 236 mt is reflective of these goals.

The commenters reference NOAA Technical Memorandum NMFS-SEFSC-616 (Calculating Acceptable Biological Catch for Stocks that Have Reliable Catch Data Only (Only Reliable Catch Stocks – ORCS; 2011)). The memorandum was developed by a Working Group

comprised of representatives from seven of the eight SSCs, five of the six NMFS Science Centers, NMFS Headquarters, academic institutions, a state agency, and an NGO to offer guidance that can be used to set ABCs for managed stocks that only have reliable catch data, are lightly fished, and appear to have stable or increasing trends. The report recommends doubling catch during a stable period to create an OFL, setting the ABC at 50 to 90 percent of the OFL, and then tracking the stock to see how the adjusted catch levels affect abundance. The Council did not evaluate the appropriateness of this method for establishing the 2014 RH/S cap because RH/S are not managed species, and because the focus of the cap is limiting RH/S catch in the mackerel fishery rather than the establishment of total catch levels for the entire RH/S stock. Instead, the Council found it most appropriate to set the cap based on recent catch in the mackerel fishery. The Council may choose to consider the applicability of the guidance in the ORCS Technical Memorandum when setting the RH/S catch cap in future years, if it desires.

Comment 20: While they supported the 95-percent closure threshold, the Herring Alliance and Pew point to analysis in Amendment 14 that suggests that earlier closures of the mackerel fishery could lead to relatively higher benefits to RH/S populations. They discussed that the 95-percent threshold will need to be evaluated based on fishery performance, and if the cap is exceeded, that the threshold must be adjusted to prevent the mackerel fishery from exceeding the cap in the future. They asserted that a lower threshold may be needed if observer coverage is not available to accurately monitor the cap.

Response: The Amendment 14 analysis discusses the RH/S cap conceptually because the actual establishment of the RH/S cap was deferred to the annual specifications process. In evaluating the concept of the cap, the Council concluded that, compared to setting the cap at a

high level, setting the cap lower could result in earlier closures of the mackerel fishery, which could lead to comparatively higher benefits to RH/S populations. In contrast, the commenters imply that the Council's Amendment 14 analysis suggests that lower closure thresholds, rather than a lower overall cap level, would lead to higher benefits for RH/S. Lowering the closure threshold would have the same effect as lowering the overall cap, and thus is likely to result in similar potential benefits to RH/S populations. However, the closure threshold is only a means to ensuring that the overall cap is not exceeded. The overall cap should be set to reach the desired conservation benefit, and the closure threshold should be set secondarily in support of ensuring the cap is not exceeded. The Council will likely evaluate the effectiveness of the closure threshold in ensuring that the cap is not exceeded, and make any necessary adjustments, as part of the specifications process for upcoming fishing years. At that time, the Council can also evaluate whether observer coverage levels are sufficient to monitor the cap, and may recommend additional management measures to ensure appropriate cap implementation.

Comment 21: The Herring Alliance suggests that, as an accountability measure, any overages of the RH/S catch cap in a given year should be deducted from the catch cap for the subsequent year, but that underages of the catch cap should not be carried over.

Response: The Council did not contemplate accountability measures for the RH/S cap in Amendment 14 or the 2014 specifications, and would need to consider this type of measure in a separate action.

Comment 22: Pew and the Herring Alliance advocate for coordination between the RH/S caps between the mackerel and herring fisheries. In particular, they suggest that the implementing language should be revised so that measures apply to trips "fishing for, catching,

possessing, transferring, or landing” the specified amount of mackerel to be consistent with the Atlantic Herring FMP.

Response: NMFS has added text to the regulations to clarify that the cap applies to trips that land over 20,000 lb (9.08 mt) of mackerel. The commenter referenced language in the Atlantic Herring FMP that describes the possession restrictions for fishing vessels following a closure of the directed herring fishery. Similar language (e.g., fish for, possess, or land) is already used to describe possession restrictions for the Atlantic mackerel fishery at § 648.26(a)(2).

Comment 23: Several individuals commented that the relationship between predator species and RH/S should be more fully considered and analyzed. While some focused on making commercial mackerel fishery restrictions more similar to recreational measures (bans on fishing, regional caps), others noted that the actions for commercial fisheries should take into account the impacts on recreational fisheries. One commenter noted that NMFS should consider the impacts on tourism and the overall economy.

Response: NMFS recognizes these concerns but notes that such analyses and holistic consideration stretch beyond the capabilities of current analytical tools and the mandates of the MSA. Through Federal fishery management plans, we are responsible for managing fisheries to OY, which is the maximum yield one can harvest while taking into account ecological factors such as habitat protection, bycatch considerations, and to the extent we understand it, the ecological role of the managed species. The relationships between commercial and recreational fisheries are complex; the economic relationships even more so. Nevertheless, NMFS strives to improve its data and understanding of such relationships. With more understanding, more

holistic analyses may be possible in the future.

Changes from the Proposed Rule

The proposed rule presented two tables (Tables 4 and 5 in the proposed rule) listing quota thresholds to reduce the trip limits for Phases 2 and 3 in the butterfish fishery. Though the tables presented the correct butterfish harvest amounts at which trip limit changes would be triggered, the tables incorrectly listed the percentages for the trip limit reductions. The correct percentages are presented in Tables 4 and 5 in this final rule, and will be presented to industry in the small entity compliance guide sent to longfin squid/butterfish permit holders after the publication of this final rule.

The proposed rule did not include regulatory text that clearly outlines the trips to which the RH/S cap apply. Similarly, the regulatory text regarding the butterfish mortality cap did not clearly state the trips to which the cap applies. Clarifying text is added for both caps in this rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the MSB FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Council prepared an EA for the 2014 specifications, and the AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available upon request (see ADDRESSES).

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866 (E.O. 12866).

The AA finds good cause under 5 U.S.C. Section 553(d)(3) to waive the 30-day delay in

effectiveness for this action. This action increases the butterfish harvest available to the fishing industry for FY 2014. The primary butterfish market available to the butterfish fishing industry occurs in late December through April due to the high fat content of the fish after feeding during the early winter. Under the 2013 butterfish allocations, the Phase 2 trip limit reduction threshold is exceeded when the fishery has landed 47 percent of the 2013 allocation (1,208 mt) of the butterfish allocation in March/April. Once the Phase 2 trip limit reduction threshold is exceeded, the butterfish possession limit is reduced from unlimited down to 5,000 lb (2.28 mt). The 2014 butterfish allocations increase the Phase 2 trip limit reduction threshold to 57 percent of the 2014 butterfish allocation (1,838 mt) for March/April.

NMFS has already issued a Phase 1 to Phase 2 trip limit reduction on March 18, 2014. As of March 26, 2014, NMFS determined that only 45 percent of the butterfish quota has been harvested relative to the 2014 specifications, meaning that the fishery could still be operating under Phase 1 for 2014. If the effectiveness of this rule were delayed for 30 days from the date of publication, the possession limit for butterfish would remain at 5,000 lb (2.28 mt) at a time of year when the value of butterfish is highest. Increasing the Phase 2 trip limit reduction threshold immediately will allow NMFS to temporarily return the butterfish fishery to Phase 1, and ensures that the butterfish fleet can continue operation with the highest possible possession limit during this critical time of year when the market is available. Vessels fishing for butterfish would only be able to obtain the increased economic opportunity provided by this final rule if the 30-day delay in effectiveness is waived. Failure to make this final rule effective immediately will cause economic harm to the butterfish fleet and undermine the intent of the rule, which is to promote the utilization and conservation of the Atlantic mackerel, squid, and butterfish resource.

Therefore, good cause exists to waive the 30-day delay in effectiveness under 5 U.S.C. Section 553(d)(3)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA, included in the preamble of this final rule, in support of the 2013 specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summaries in the IRFA, a summary of the significant issues raised by the public in response to the IRFA, and NMFS's responses to those comments. A copy of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES).

Statement of Need for this Action

This action establishes 2014 specifications for butterfish, along with management measures for the longfin squid, butterfish, and mackerel fisheries. A complete description of the reasons why this action was considered, and the objectives of and legal basis for this action, are contained in the preamble to this rule and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

None of the public comments raised issues related to the IRFA or the economic impacts of the rule on affected entities.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising

the small business size standards for several industries effective July 22, 2013 (78 FR 37398).

The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards.

The proposed measures in the 2014 MSB Specifications and Management Measures could affect any vessel holding an active Federal permit to fish for Atlantic mackerel, longfin squid, Illex squid, or butterfish. Having different size standards for different types of marine fishing activities creates difficulties in categorizing businesses that participate in more than one of these activities. For now, the short-term approach is to classify a business entity into the SBA defined categories based on which activity produced the highest gross revenue. In this case, Atlantic mackerel is the only species with significant recreational fishing, and in 2012, the charter boat industry harvested only 10,000 lb (4.54 mt). Based on these assumptions, the finfish size standard would apply, and the business is considered large, only if revenues are greater than \$19 million. As such, all of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines, because they have gross receipts that do not exceed \$19 million annually. Based on permit data for 2013, 2,441 commercial or charter vessels possessed MSB permits for FY 2013, and similar numbers of vessels are expected to have MSB permits for 2014. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Although it is possible that some entities, based on rules of affiliation, would qualify as

large business entities, due to lack of reliable ownership affiliation data NMFS cannot apply the business size standard at this time. NMFS is currently compiling data on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities for future actions. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. Therefore, there are no disproportionate economic impacts on small entities. Section 6.7 in Amendment 14 describes the vessels, key ports, and revenue information for the MSB fisheries; therefore, that information is not repeated here.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, there are no Federal rules that duplicate, overlap, or conflict with this rule.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Actions Implemented with the Final Rule

The RH/S catch cap in the mackerel fishery has the potential to limit the fishery from achieving its full mackerel quota if the RH/S encounter rates are high, but it is very unlikely that the fishery would close before exceeding the levels of landings experienced since 2010, when

landings have been less than 11,000 mt. Limiting catches of RH/S has the potential to benefit those species, although the extent of this benefit is unknown because overall abundance information for these species is not available.

The butterflyfish DAH implemented in this action (3,200 mt) represents a 24-percent increase over the 2013 DAH (2,570 mt). The increase in the DAH has the potential to slightly increase revenue for permitted vessels.

This action also implements slightly higher trip limit in Phase 3 of the directed butterflyfish fishery, in order to simplify the regulations and have this limit match the incidental trip limit of 600 lb (0.27 mt). This increase should also have positive economic impacts on the fishery.

The only adjustment to the longfin squid fishery is an increase to the Trimester II longfin squid post-closure possession limit for longfin squid/butterfish moratorium permit holders from 2,500 lb (1.13 mt) to 15,000 lb (6.80 mt) for vessels targeting Illex. This measure should reduce regulatory discarding and provide a small amount of additional revenue; thus, it would have positive economic impacts to the Illex fishery.

Alternatives to Actions in the Final Rule

The Council analysis evaluated four alternatives to the specifications for butterflyfish. Of the three the Council did not select, two alternatives would have resulted in lower 2014 specifications. The first of these is the No Action alternative (status quo), which would have set the butterflyfish ABC at 8,400 mt and resulted in an ACT of 7,560 mt, a DAH and DAP of 2,570 mt, and a butterflyfish mortality cap at 3,884 mt. The other alternative (the most restrictive) would have set the ABC at 25 percent lower than the proposed alternative (6,825 mt), resulting in an ACT of 6,143 mt, a DAH and DAP of 2,400 mt, and a butterflyfish mortality cap at 2,913 mt.

These alternatives could generate the lowest revenues of all of the considered alternatives. The fourth alternative (the least restrictive) would have set the ABC at 25 percent higher than the proposed alternative (11,375 mt), resulting in an ACT of 10,238 mt, a DAH and DAP of 5,248 mt, and a butterfish mortality cap at 3,884 mt. This alternative could generate increased revenue if more butterfish became available to the fishery. These three alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

The Council considered four alternatives for the RH/S catch cap in the mackerel fishery. Aside from the No Action (status quo) alternative, which would not have implemented a catch cap in the fishery because there is currently no cap in place, the Council considered one alternative that would have set the RH/S catch cap at 119 mt (most restrictive) and one alternative that would have set the RH/S catch cap at 456 mt (least restrictive). If the catch cap were set at 119 mt, there would be the greatest likelihood that the cap level could restrict mackerel fishing, whereas setting the RH/S cap at 456 mt would be the least likely to be restrictive. Any cap would be more likely to close the fishery compared to no cap (status quo), the selected alternative (RH/S cap of 236 mt) would most likely assist in the recovery of RH/S stocks while allowing the mackerel fishery to continue, assuming low RH/S catch rates.

With regards to matching Phase 3 and the incidental trip limits in the butterfish fishery, the Council considered two other alternatives in addition to the selected alternative (i.e., increasing the Phase 3 trip limit from 500 lb (0.23 mt) to 600 lb (0.27 mt), to match the incidental limit). One alternative was the No Action alternative, which would have unnecessarily continued the regulatory confusion by requiring two different possession limits based on permit type. The other alternative would have lowered the incidental limit to 500 lb

(0.23 mt) to match the current Phase 3 limit, which potentially could have the effect of converting currently retained butterfish catch into discards. The selected alternative resolves this confusion over different trip limits, while continuing to discourage directed fishing.

The Council considered three alternatives related to the post-closure possession limit of longfin squid in the Illex fishery. The most restrictive alternative considered was the No Action (status quo) alternative, which would continue the current longfin squid trip limit of 2,500 lb (1.13 mt) in Trimester 3. The selected alternative, which would increase the possession limit to 15,000 lb (6.80 mt), is the least restrictive alternative. The other alternative considered would have increased the longfin squid possession limit to 10,000 lb (4.54 mt). Compared to the other two alternatives, the status quo alternative would continue to result in high levels of regulatory discards of longfin squid and would result in lower revenues than the other alternatives considered. Although the other two alternatives would both result in previously discarded longfin squid being landed, the selected alternative, with its higher possession limit, results in the highest potential revenue.

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 31, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.23, paragraph (a)(3) is revised and paragraph (a)(4) is added to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

* * * * *

(a) * * *

(3) Illex fishery. Seaward of the following coordinates, connected in the order listed by straight lines except otherwise noted, otter trawl vessels possessing longfin squid harvested in or from the EEZ and fishing for Illex during the months of June, July, August, in Trimester II, and September in Trimester III are exempt from the longfin squid gear requirements specified in paragraph (a)(2) of this section, provided that landward of the specified coordinates they do not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than $1\frac{7}{8}$ inches (48 mm) diamond mesh in Trimester II, and $2\frac{1}{8}$ inches (54 mm) diamond mesh in Trimester III, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (a)(2) of this section.

Point	N. lat.	W. long.
M0	43°58.0'	[¹]
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'

M9	42°10.0'	67°10.0' [²]
M10	41°18.6'	66°24.8' [²]
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'
M16	40°18.7'	69°40.0'
M17	40°21.0'	71°03.0'
M18	39°41.0'	72°32.0'
M19	38°47.0'	73°11.0'
M20	38°04.0'	74°06.0'
M21	37°08.0'	74°46.0'
M22	36°00.0'	74°52.0'
M23	35°45.0'	74°53.0'
M24	35°28.0'	74°52.0'
M25	35°28.0'	[³]

[¹] The intersection of 43°58.0'N. latitude and the US-Canada Maritime Boundary.

[²] Points M9 and M10 are intended to fall along and are connected by the US-Canada Maritime Boundary.

[³] The intersection of 35°28.0'N. latitude and the outward limit of the US EEZ.

(4) Mackerel, squid, and butterfish bottom trawling restricted areas. (i) Oceanographer Canyon. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Oceanographer Canyon or be in the Oceanographer Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of

paragraph (b) of this section. Oceanographer Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Oceanographer Canyon

Point	N. lat.	W. long.
OC1	40°10.0'	68°12.0'
OC2	40°24.0'	68°09.0'
OC3	40°24.0'	68°08.0'
OC4	40°10.0'	67°59.0'
OC1	40°10.0'	68°12.0'

(ii) Lydonia Canyon. No permitted mackerel, squid, or butterfish vessel may fish with bottom trawl gear in the Lydonia Canyon or be in the Lydonia Canyon unless transiting. Vessels may transit this area provided the bottom trawl gear is stowed in accordance with the provisions of paragraph (b) of this section. Lydonia Canyon is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Lydonia Canyon

Point	N. lat.	W. long.
LC1	40°16.0'	67°34.0'
LC2	40°16.0'	67°42.0'
LC3	40°20.0'	67°43.0'
LC4	40°27.0'	67°40.0'
LC5	40°27.0'	67°38.0'
LC1	40°16.0'	67°34.0'

* * * * *

3. In § 648.24, paragraphs (b)(1), (c)(1)(iii) and (c)(3) are revised and paragraph (b)(6) is added to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(b) * * *

(1) * * *

(i) Mackerel commercial sector EEZ closure. NMFS will close the commercial mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the mackerel DAH is harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the commercial fishery shall be in effect for the remainder of that fishing year, with incidental catches allowed as specified in § 648.26. When the Regional Administrator projects that the DAH for mackerel will be landed, NMFS shall close the commercial mackerel fishery in the EEZ, and the incidental catches specified for mackerel in § 648.26 will be prohibited.

(ii) NMFS will close the Tier 3 commercial mackerel fishery in the EEZ when the Regional Administrator projects that 90 percent of the Tier 3 mackerel allocation will be harvested, if such a closure is necessary to prevent the DAH from being exceeded. The closure of the Tier 3 commercial mackerel fishery will be in effect for the remainder of that fishing period, with incidental catches allowed as specified in § 648.26.

* * * * *

(6) River herring and shad catch cap. The river herring and shad cap on the mackerel fishery applies to all trips that land more than 20,000 lb (9.08 mt) of mackerel. NMFS shall close the directed mackerel fishery in the EEZ when the Regional Administrator projects that 95 percent of the river herring/shad catch cap has been harvested. Following closures of the directed mackerel fishery, vessels must adhere to the possession restrictions specified in § 648.26.

(c) * * *

(1) * * *

(iii) Phase 3. NMFS shall subsequently reduce the trip limit for vessels issued longfin squid/butterfish moratorium permits to 600 lb (0.27 mt), regardless of minimum mesh size, when butterfish harvest is projected to reach the relevant phase 3 trip limit reduction threshold. The NMFS Regional Administrator may adjust the butterfish trip limit during phase 3 of the directed butterfish fishery anywhere from 250 lb (0.11 mt) to 750 lb (0.34 mt) to ensure butterfish harvest does not exceed the specified DAH.

* * * * *

(3) Butterfish mortality cap on the longfin squid fishery. The butterfish mortality cap on the longfin squid fishery applies to all trips that land more than 20,000 lb (9.08 mt) of mackerel. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 80 percent of the Trimester I butterfish mortality cap allocation has been harvested in Trimester I, when 75 percent of the annual butterfish mortality cap has been harvested in Trimester II, and/or when 90 percent of the butterfish mortality cap has been

harvested in Trimester III. Following closures of the directed longfin squid fishery, vessels must adhere to the possession restrictions specified in § 648.26.

* * * * *

4. In § 648.26, paragraphs (a)(1)(iii), (b) and (d)(3) are revised to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

* * * * *

(a) * * *

(1) * * *

(iii) A vessel issued a Tier 3 Limited Access Mackerel Permit is authorized to fish for, possess, or land up to 100,000 lb (45.36 mt) of Atlantic mackerel in the EEZ per trip, and may only land Atlantic mackerel once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that the fishery has not been closed because 90 percent of the Tier 3 allocation has been harvested, or 95 percent of the DAH has been harvested, as specified in § 648.24(b)(1)(i) and (ii).

* * * * *

(b) Longfin squid. (1) Unless specified in paragraph (b)(2) of this section, during a closure of the directed fishery for longfin squid vessels may not fish for, possess, or land more than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a longfin squid incidental catch permit (as specified at § 648.4(a)(5)(ii)), then it may not fish for, possess, or land more than 2,500 lb (1.13

mt) of longfin squid per trip at any time and may only land longfin squid once on any calendar day, unless such a vessel meets the criteria outlined in paragraph (b)(2) of this section.

(2) During a closure of the directed fishery for longfin squid for Trimester II, a vessel with a longfin squid/butterfish moratorium permit that is on a directed Illex squid fishing trip (i.e., possess over 10,000 lb (4.54 mt) of Illex) and is seaward of the coordinates specified at § 648.23 (a)(3), may possess up to 15,000 lb (6.80 mt) of longfin squid. Once landward of the coordinates specified at § 648.23 (a)(3), such vessels must stow all fishing gear, as specified at § 648.23(b), in order to possess more than 2,500 lb (1.13 mt) of longfin squid per trip.

* * * * *

(d) * * *

(3) Phase 3. When butterfish harvest is projected to reach the trip limit reduction threshold for phase 3 (as described in § 648.24), all vessels issued a longfin squid/butterfish moratorium permit, regardless of mesh size used, may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a longfin squid/butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time.